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SEC AO2012-004

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SUBJECT: Conflict of Interest

SUMMARY: The Coastal Carolina Board of Trustees may fund the president's annuity from the Coastal Education Foundation's funds. The president may fund the executive vice president's annuity using discretionary "14" funds at his disposal.

QUESTION: Coastal Carolina Board of Trustees seeks approval of various funding mechanisms for the President and the Executive Vice President?

DISCUSSION: This opinion is rendered in response to a letter dated April 17, 2012 requesting an opinion from the State Ethics Commission. The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The Board of Trustees of Coastal Carolina University ("the Board") has the authority to appoint and establish compensation for the university president. The Board has the authority to fund an annuity by the Coastal Educational Foundation ("the Foundation"). The executive vice president also has an agreement with his compensation established by the president. The Board also desires to fund an annuity for the executive vice president for a limited period.

Coastal Carolina University ("the University") has a source of discretionary money that is derived from auxiliary funds (i.e., vending machines and food services). These funds are entitled "14" (discretionary) and all spending for the funds must be approved by the president. The questions are:

1. If the president recused himself and gave approval authority to the Board, could the annuity for the president and the executive vice president be funded from these discretionary "14" funds?
2. Are there any ethical issues with the Foundation funding annuities if "14" funds cannot be used for these annuities?
3. Since the president has spending approval for said funds, could he simply establish the annuity for the executive vice president?

Since requesting this opinion the University has received information from the Agency Head Salary Commission that discretionary funds may not be used to fund the president's annuity; however, the Foundation funds could be used. Question one as regards the president is withdrawn.

Section 8-13-100(11) provides as follows:

(a) 'Economic interest' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-700(B) provides as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a mem-

ber of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Section 8-13-700(B) requires that, in the event of a conflict of interest, a public employee must recuse himself from participating in certain governmental actions or decisions in which he has an economic interests. The public employee is prohibited from voting, deliberating or taking any other action relating to the conflict.

Based on the Agency Head Salary Commission's decision, the president's annuity may not be funded with discretionary "14" funds. The president is not required to recuse from the decision of funding the executive vice president's annuity with "14" funds. Assuming the president does not use his position to influence the Foundation, the Foundation may fund the president's annuity with other monies available to it. As previously noted, the president may fund the executive vice president's annuity with "14" funds.

CONCLUSION: The Coastal Carolina Board of Trustees may fund the president's annuity from the Coastal Education Foundation's funds. The president may fund the executive vice president's annuity using discretionary "14" funds at his disposal.

KEY WORDS: conflict of interest, recusal, economic interest
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ANNOTATIONS: 8-13-100(11) and 8-13-700(B)
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